

### **REMARKS/ARGUMENTS**

Claims 1-15 stand rejected in the outstanding Official Action. Applicants have amended claims 1-4, 6-9 and 11-14 and therefore claims 1-15 remain in this application.

The Examiner's acknowledgment of acceptability of Applicants' originally filed formal drawings is very much appreciated.

Claims 1, 2, 6, 7, 11 and 12 stand rejected under 35 USC §102 as being anticipated by Gluck (U.S. Patent 5,948,104). The Court of Appeals for the Federal Circuit has noted in the case of *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984) that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Applicants' specification, on pages 2 and 3 and particularly on page 4, lines 10-20, teaches that the present invention is related to a technique whereby the order in which virus test drivers are applied is selected in dependence upon classification data associated with the virus test drivers (and their priority) and varies in dependence upon the classification data. The benefit of this method and apparatus is that virus drivers targeted at newly released and accordingly high threat viruses are to be applied with a high priority, i.e., earlier in the test sequence, whereas virus test drivers associated with low risk viruses are applied with the lower priority, i.e., later in the test sequence.

Applicants have amended independent claims 1, 6 and 11 to clearly indicate that there is a variable priority to Applicants' application of anti computer test virus test

drivers in a variable priority. Thus, in order to anticipate Applicants' independent claims, it is necessary that the Patent Office point out how or where the cited Gluck reference teaches that the virus test drivers have classification data relating to priority of use and that these drivers are applied in a variable priority order dependent upon the associated classification data.

Applicants agree that Gluck at column 5, line 45 to column 6, line 36 teaches that virus signatures are stored and sorted in ascending numerical order within the table structure. Specifically, the Examiner's attention is directed to column 6, lines 21-23, which states that in the Gluck method "if signature count field 140 indicates that no signatures begin with this byte, the scan process is restarted for the next byte in memory" i.e., the next byte in sequence. There is no indication that the virus signatures are stored in any priority order or that they are accessed from the highest priority to the lowest priority.

The very nature of the Gluck method is that when a new virus signature is to be added to the library, this will be added at a position determined by its numerical value, irrespective of its threat level. Accordingly, Gluck fails to teach any aspect of Applicants' prioritizing of anti computer virus tests or a method of applying virus test drivers in accordance with variable priority.

As a result, because Gluck fails to teach the method steps and structures recited in Applicants' independent claims 1, 6 and 11, it cannot anticipate these independent claims or any claims dependent thereon.

Claims 3-5, 8-10 and 13-15 stand rejected under 35 USC §103 as unpatentable over Gluck in view of “the examiner taking official notice.” Specifically, the Examiner suggests that he may take official notice “that it would have been obvious to anyone having a ordinary level of skill to maintain this feature since the order **probably** would relate to the most important files and their frequency of use.” (Page 3, lines 1-3 of the Official Action, emphasis added).

Firstly, with respect to the “official notice,” the Examiner’s attention is directed to the Manual of Patent Examining Procedure (MPEP) Section 2144.03. Applicants respectfully traverse the Examiner’s assertion and pursuant to the MPEP requires the Examiner to cite a reference in support of his position (“if the applicant traverses such an assertion, the examiner should cite a reference in support of his or her position.” MPEP Section 2144.03).

Secondly, the Examiner is not permitted to speculate as to what would and would not be obvious. Thus the Examiner’s qualification that “the order **probably** would relate to the most important files and their frequency of use” is insufficient to support any prior art rejection.

Additionally, Applicants note that claims 3 and 4 recite different method steps (as do claims 8 and 9 and 13 and 14, respectively). What the Examiner is referring to in his rejection when he states “this feature” (page 3, line 2) is not determinable from the Official Action. What feature is the Examiner referring to – the feature of claim 3, the feature of claim 4 or both features? Since claims 3 and 4, 8 and 9 and 13 and 14 all

directly depend from their respective independent claims 1, 6 and 11, it is incumbent upon the Examiner to clearly indicate what “feature” he believes would be obvious.

Moreover, as noted above, Applicants have traversed the “official notice” and therefore it is incumbent upon the Examiner to provide some reference disclosing whatever “feature” he believes would be obvious. Additionally, it is noted that the Examiner suggests that as per claims 5, 10 and 15, Gluck teaches an “on-axis scanning agent.” However, claims 5, 10 and 15 depend from claims 4, 9 and 14 which all recite Applicants’ claimed “priority order” which is simply not present and is certainly not obvious in view of the Gluck teaching.

Therefore, the Examiner has failed to disclose how Gluck’s teaching of “on-access scanning agents” anticipates or renders obvious Applicants’ limitations set out in claims 5, 10 and 15 that the plurality of anti computer virus programs including the six noted programs are set in the priority order of claims 4, 9 and 14.

Moreover, the Examiner has provided no indication, motivation or reason why one of ordinary skill in the art would pick and choose elements from the Gluck reference, combine them with some as yet undisclosed “official notice” elements in the manner of Applicants’ claims. Because the Court of Appeals for the Federal Circuit places the burden for showing some motivation for combination of references on the Examiner and because the Examiner has failed to provide any suggestion or motivation for combination, any combination of references supporting a rejection under 35 USC §103 is

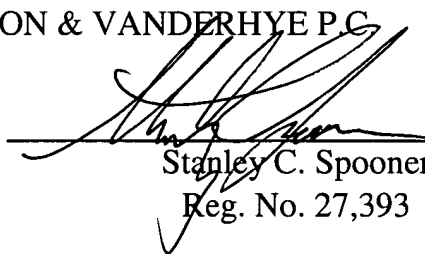
respectfully traversed, absent the Examiner's complying with the Federal Circuit's mandate.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-15 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact applicant's undersigned representative.

Respectfully submitted,

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